



U.S. Department
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LIBBY #3

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To: Jim Christiansen, EPA RPM Region 8

From: John McGuiggin, Volpe Project Manager

Date: March 2, 2005

Subject: Compensation for Non-Residential Relocations – Libby Asbestos Superfund Site

Business owners who are relocated for asbestos removal are entitled to compensation that adheres to the EPA's *Superfund Response Actions: Temporary Relocations Implementation Guidance*¹. The original recommendation for a flat-rate compensation of \$86.00 per diem was evaluated for consistency with the *Superfund Response Actions*. The following are inconsistencies with the aforementioned recommendation:

- The EPA document states that *"Determinations for the types of relocation assistance EPA can provide are made on a case-by-case basis, and consider factors such as essential equipment needed to continue operation, special hook-ups, disconnections..."* The \$86.00 per diem recommendation does not allow for case-by-case compensation based upon the differing expenses of each business.
- Additionally, the EPA document states that *"Assistance for non-residential relocations is different from assistance for residential relocations."* The \$86.00 per diem flat rate was suggested out of an attempt to equalize the effects of relocation between homeowners and business owners. However, this rate is based upon lodging and food of residential relocations rather than overhead costs associated with businesses.

In lieu of the \$86.00 per diem recommendation for non-residential relocations, below is a proposed compensation plan that is in alignment with the EPA's *Superfund Response Action* guidance document. Since *"costs associated with loss of goodwill, loss of profits, and loss of trained employees are not reimbursable"* each business owner will be compensated based upon a six-month² average of the following overhead costs:

- Insurance
- Utilities (water, electricity, and/or gas)
- Communication (phone, fax, and or internet)
- Essential operating equipment

¹ *Superfund Response Actions: Temporary Relocations Implementation Guidance*, U.S. EPA-OSWER, OSWER Directive 9230.0-97, April 2002, Section VII I. Reimbursement for Non-Residential Relocations, p 35-36.

² A six-month average of overhead costs will account for fluctuations in usage and will provide a more equitable daily rate for operating costs for the business owner.

The compensation will differ for each business owner based upon the submittal of invoices/receipts. The business owner's compensation will be pro-rated. All items must be reviewed and approved by the relocation team. According to the EPA document *"the Temporary Relocation team should work with the OGC/ORC, the Region's OERR Regional Coordinator, and relocation specialists from the supporting agencies to determine the appropriate scope of relocation assistance for each non-residential operation requiring relocation."* This allows for the approval and disapproval of items to be at the relocation team's discretion.

The proposed compensation plan permits assistance to be awarded on a case-by-case basis in an effort to defray overhead business expenses during the relocation period. Furthermore, this non-residential assistance is different from the per diem compensation provided to relocated residents and allows the Temporary Relocation Team and supporting agencies to determine that appropriate approval of relocation assistance occurs.

We would like to implement the proposed non-residential relocation reimbursement for the 2005 construction season. Please contact me if you have any questions.